

The rolling stock exemption is available to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340. (This is a GIL).

May 23, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed on the Internet at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The following Request for a General Information Letter is submitted pursuant to the provisions of 2 Ill. Adm. Code Section 1200.

COMPANY herein seeks a confirmation of its understanding that the Illinois Retailers' Occupation Tax Act provides an exemption for vehicles purchased by COMPANY and contracted for by the CITY for use at AIRPORT to furnish ground transportation services to passengers.

FACTS

COMPANY is a STATE Limited Liability Company engaged in, among other things, the business of operating a fleet of transit buses at numerous airports in the United States, including AIRPORT1 AND AIRPORT2. COMPANY has recently entered into a contract with the CITY and will begin in-transit busing in the near future at AIRPORT (Exhibit A). COMPANY is seeking information that will allow it to serve its new customers as efficiently as possible.

AIRPORT serves over 70 million passengers annually. It is also known that virtually all of these passengers are traveling on international or interstate journeys.

Pursuant to COMPANY's contract with the CITY it will operate a shuttle bus service at AIRPORT for the benefit of arriving and departing airline passengers. In order to make transportation between terminals and to and from the parking lots as convenient as possible, COMPANY will utilize modern buses that accommodate large numbers of passengers at any one time, including the physically challenged (See Exhibit B).

The contract obligates COMPANY to 'provide passenger transportation' at AIRPORT, including the furnishing of all labor, equipment, materials, facilities and services. These

services include operating, repairing and maintaining vehicles approved by the City; obtaining and operating buses for the transportation of passengers; providing all required, trained labor (e.g., drivers, dispatchers, mechanics, administrators, etc.); providing all necessary tools and repair/maintenance facilities; and providing all associated business operations (i.e. an on-site dispatching facility, maintenance, etc.).

The buses will be operated for hire to the CITY in continuous service – 24 hours a day, 7 days a week – on specified routes that include stops at pedestrian shelters, parking lots, Terminals 1, 2, and 3, and the International Terminal.

COMPANY expects, by the time operations start at AIRPORT, to have a Federal Highway Authority Highway Authority (FHWA) license for the interstate transportation of passengers.

APPLICABLE LAWS AND REGULATION

The Illinois Retailers' Occupation Tax Act provides an exemption for tangible personal property sold to interstate carriers for hire for use as 'rolling stock' moving in interstate commerce (35 ILCS 120/2-5(12) and (13)). The Use Tax Act provides for the same exemption (35 ILCS 105/3-55).

Illinois Regulations, Section 130.340, 'Rolling Stock', describes the exemption as follows:

(a) Notwithstanding the fact that the sale is at retail, the Retailer's Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock¹ moving in interstate commerce....

(b) The term 'Rolling Stock' includes the transportation vehicles of any kind of interstate transportation company for hire...but not vehicles which are being used by a person to transport its officers, employees, customers or others not for hire (even if they cross State lines) or to transport....

* * * *

(d) the exemption applies to vehicles used by an interstate carrier for hire, even just between points in Illinois, in transporting, for hire, persons whose journeys or property whose shipments, originate or terminate outside Illinois on other carriers.

The equipment is claimed at the time of purchase when the purchaser 'is an interstate carrier for hire' (Reg. § 130.340(e)²).

In summary, there are three requirements:

- The purchaser must purchase the transportation vehicle for use as rolling stock to transport persons moving in interstate commerce.
- The transportation vehicle must be used by the carrier for hire, *i.e.* not for self-use.
- When making a purchase of qualifying property, the purchaser must provide the seller with a certification that it is an interstate carrier for hire.

CONCLUSION

COMPANY meets the requirements for the rolling stock exemption. Provided that, at the time of purchase, COMPANY provides the seller of the transportation vehicle with a certification that it is an interstate carrier for hire and that it is purchasing the transportation vehicle for use as rolling stock moving in interstate commerce, the transportation vehicle may be purchased exempt from Illinois Retailers' Occupation Sales and Use Taxes.

Please confirm our conclusion. If you have questions. Please feel free to contact the undersigned. Thank you for your consideration of this letter request.

The rolling stock exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The exemption is available to interstate carriers for hire for use as rolling stock moving in interstate commerce.

To qualify for the exemption, interstate carriers must be able to show, from their books and records, that they engage in interstate shipping for hire on a "regular and frequent" basis. Recent legislation has clarified this requirement so that effective August 14, 1999, motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof, must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12-month period. The first 12-month qualifying period for the use of a vehicle or trailer begins on the date of registration or titling with an agency of this State, whichever occurs later. The vehicle or trailer must continue to be used in a qualifying manner for each consecutive 12-month period. See proposed rule 86 Ill. Adm. Code 130.340. If the purchaser is a lessor, the purchaser must give the seller of the property a certification to that effect. Please note the giving of such certification does not guarantee that the transaction is nontaxable because the Department is authorized to go behind it and disregard it by examining the purchaser's records or activities. See 86 Ill. Adm. Code 130.340(e).

Airport parking lot buses that transfer persons from a parking lot to a tram or terminal are not used as a portion of an interstate movement for hire. The persons who use the buses may be ticketed passengers, however the buses are also available for use by anyone that parks in the lots or needs transport from one terminal to another. Even if it could be demonstrated that the buses were

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used exclusively to transport ticketed passengers from their cars to the tram, we do not think that the exemption would be available. Such use would be, at best, incidental to the passengers' interstate journeys and would not qualify the buses for the exemption. See LeTourneau R.R. Service v. Department of Revenue, 134 Ill. App. 3d 638 (4th Dist. 1985).

I hope this information is helpful. The Department of Revenue maintains a web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.

- 1 The exemption does not apply to fuel nor to other items used to service the equipment.
- 2 The purchaser would include its Federal Highway Authority number at the time the exemption is claimed.